## UNITED STATES OF AMERICA BEFORE THE NATIONAL LABOR RELATIONS BOARD

#### RAYMOND INTERIOR SYSTEMS

and

Case 21-CA-37649

SOUTHERN CALIFORNIA PAINTERS AND ALLIED TRADES, DISTRICT COUNCIL NO. 36, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, LOCAL UNION 1506

and

Case 21-CB-14259

SOUTHERN CALIFORNIA PAINTERS AND ALLIED TRADES DISTRICT COUNCIL NO. 36, INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, AFL-CIO

and

SOUTHWEST REGIONAL COUNCIL OF CARPENTERS, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

(Party in Interest)

# RESPONDENT CARPENTERS LOCAL UNION 1506'S ANSWERING BRIEF TO PAINTERS UNION'S CROSS-EXCEPTIONS

Kathleen M. Jorgenson DeCARLO, CONNOR & SHANLEY 533 South Fremont Ave., 9<sup>th</sup> Floor Los Angeles, CA 90014 Phone: (213) 488-4100

Fax: (213) 488-4180

Respondent United Brotherhood of Carpenters and Joiners of America, Local 1506

("Respondent Carpenters Union") hereby submits its answering brief to the cross-exceptions

filed by Charging Party Southern California Painters and Allied Trades District Council No. 36,

International Union of Painters and Allied Trades, AFL-CIO ("Painters Union").

Charging Party Painters Union excepts to the ALJ's remedy to the extent that it did not require Respondent Raymond to make the drywall finishing employees "whole" by maintaining the level of benefits set forth in the Carpenters Union contract or the expired Painters Union contract, whichever is greater. There is no support for such a remedy, nor any rationale. Further, the Painters Union's suggested remedy is inconsistent with the General Counsel's Complaint.

Respondent Raymond lawfully repudiated its agreement with Charging Party Painters Union, effective September 31, 2006. Consolidated Complaint ("Cpt.") at ¶ 11. The instant case is therefore not an unlawful repudiation case, unlike Topor Contracting, Inc., 345 NLRB 1278 (2005), and Schwickert's of Rochester, Inc., 349 NLRB 687 (2007) (Schwickert's II), both of which Painters Union cites as support for its attempt to extend its expired agreement beyond its termination date. Further, the instant case arises in the construction industry context, and further where the expired Painters Union agreement was valid under Section 8(f) only, unlike New Concept Solutions, LLC, 349 NLRB 1136 (2007), Riverbay Corp., 340 NLRB 35 (2003), and Winsor Castle Health Care Facilities, 310 NLRB 579 (1993), which the Painters Union also cites as authority.

There is simply no authority for the proposition that the Board should extend the Painters Union's Section 8(f) contract beyond its termination date and beyond Respondent Raymond's lawful repudiation of it. As Charging Party Painters Union concedes, the Board will not order

restoration of benefits set forth in a Section 8(f) contract after the expiration date of that contract.

See Painters Union Brief in Support of Cross-Exceptions at pp. 6-7, citing Reliable Electric Co.,

286 NLRB 834, 836 (1987); Morton Electric, Inc., 314 NLRB 466, n.2 (1994). The status quo at

the time of the alleged violations by Respondents simply did not include the wages or benefits

established under the Painters Union agreement. Whether Respondent Raymond rendered

unlawful assistance to Respondent Carpenters Union or not, that assistance was rendered after

the expiration of the Painters Union agreement. The alleged unlawful assistance could not

somehow revive the expired and lawfully repudiated Painters Union agreement. Any "loss" of

Painters Union benefits by the drywall finishers had already occurred, by way of indisputably

lawful conduct.

For the foregoing reasons, Respondent Carpenters Union respectfully requests that the

Board overrule the cross-exceptions filed by Charging Party Painters Union in this matter. There

is no authority supporting its attempt to retroactively revive its agreement, and the requested

remedy is inconsistent with the Consolidated Complaint.

Respectfully submitted,

DATED: February 24, 2009

DeCARLO, CONNOR & SHANLEY

A Professional Corporation

Kathleen M. Jorgenson

Attorneys for Respondent UNITED

BROTHERHOOD OF CARPENTERS AND

JOINERS OF AMERICA, LOCAL UNION 1506

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### PROOF OF SERVICE

### STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

- I, Kathleen M. Jorgenson, declare as follows:
- 1. I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is DeCARLO, CONNOR & SHANLEY, a Professional Corporation, 533 South Fremont Avenue, Ninth Floor, Los Angeles, California 90071-1706.
- 2. On February 24, 2009, I telephonically notified Patrick Cullen, Richa Amar, and Richard Zuniga, counsel for the other parties in this matter, that Respondent United Brotherhood of Carpenters and Joiners of America, Local Union 1506 would be E-Filing the RESPONDENT CARPENTERS LOCAL UNION 1506'S ANSWERING BRIEF TO PAINTERS UNION'S CROSS-EXCEPTIONS in Cases Nos. 21-CA-37649 and 21-CB-14259.
- 3. I hereby certify that on February 24, 2009, I filed RESPONDENT CARPENTERS LOCAL UNION 1506'S ANSWERING BRIEF TO PAINTERS UNION'S CROSS-EXCEPTIONS in Cases Nos. 21-CA-37649 and 21-CB-14259, via E-Filing and caused the original and eight (8) copies of the foregoing document to be placed in a sealed envelope and sent overnight delivery via Federal Express as follows:

Lester A. Heltzer, Executive Secretary NATIONAL LABOR RELATIONS BOARD 1099 14th Street, N.W. Washington, DC 20570-0001 Phone: 202,273,1067

4. I hereby certify that on February 24, 2009, I caused to be served the foregoing document described RESPONDENT CARPENTERS LOCAL UNION 1506'S ANSWERING BRIEF TO PAINTERS UNION'S CROSS-EXCEPTIONS in Cases Nos. 21-CA-37649 and 21-CB-14259 on the interested parties in this action via e-mail:

James Small, Regional Director NATIONAL LABOR RELATIONS BOARD REGION 21 james.small@nlrb.gov

Ellen Greenstone, Esq.
Richa Amar, Esq.
ROTHNER SEGALL & GREENSTONE
egreenstone@rsgllabor.com
rmar@rsgllabor.com

Patrick Cullen, Counsel for the General Counsel NATIONAL LABOR RELATIONS BOARD REGION 21 patrick.cullen@nlrb.gov

NATIONAL LABOR RELATIONS BOARD DIVISION OF JUDGES doreen.gomez@nlrb.gov

Richard Zuniga, Esq. HILL, FARRER & BURRILL, LLP rzuniga@hillfarrer.com

Executed on February 24, 2009, at Los Angeles, California.

Kathleen M. Jorgenson